## UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:16-cv-342-RJC

(3:07-cr-144-RJC-2)

NILES M. BELK,	)	
Petitioner,	)	
VS.	)	ORDER
UNITED STATES OF AMERICA,	)	
Respondent.	)	
	)	

**THIS MATTER** is before the Court on Respondent's Motion to Hold Petitioner's Motion to Vacate in Abeyance, (Doc. No. 8).

Petitioner filed a Motion to Vacate pursuant to 28 U.S.C. § 2255 Motion to Vacate through counsel in which he argued that his career offender sentence was unconstitutional in light of <u>Johnson v. United States</u>, 135 S.Ct. 2551 (2015). The Court ordered the Government to respond to the § 2255 petition, however, it moved to stay these proceedings until the United States Supreme Court resolved <u>Beckles v. United States</u>, Case No. 15-8544. (Doc. No. 3). The Court granted the stay. (Doc. No. 4). After the Supreme Court decided <u>Beckles</u>, 137 S.Ct. 886, Petitioner moved to amend his § 2255 Motion to Vacate to add the claim that his conviction pursuant to 18 U.S.C. § 924(c) is invalid under <u>Johnson</u>. (Doc. No. 6). He also moved to stay this case pursuant to <u>Sessions v. Dimaya</u>, Case No. 15-1498. (Doc. No. 7). The Court granted the Motion to Amend but denied the Motion to Stay as moot because <u>Dimaya</u> has now been decided, 138 S.Ct. 1204.

The United States has filed a Motion to Hold Petitioner's Motion to Vacate in Abeyance pending the Fourth Circuit's decision in <u>United States v. Simms</u>, Case No. 15-4640, in the interest in judicial economy. Petitioner's counsel does not object to the Motion. (Doc. No. 8 at 2). The

stay will be granted.

## IT IS HEREBY ORDERED that

Respondent's Motion to Hold Petitioner's Motion to Vacate in Abeyance, (Doc. No. 8), is **GRANTED**. The Government shall have 60 days following the Fourth Circuit's issuance of the mandate in <u>Simms</u> to file its Response.

Signed: August 7, 2018

Robert J. Conrad, Jr.

United States District Judge